

REMARKS

Status of the Claims

Claims 1-26 are pending in this application.

Claims 22 and 26 are withdrawn from consideration

Claims 1-21 and 23-25, currently under examination, stand rejected.

Claims 1-21, 24, and 25 are amended herein and claims 27-41 are newly added.

No new matter is introduced.

Claim Amendments and New Claims

Claim 1 is amended herein to delete dandruff, acne, excess sebum production, and blackheads from the list of conditions to be treated. This amendment is made without prejudice or disclaimer. Applicants reserve the right to pursue the canceled subject matter in one or more divisional or continuation applications.

Claim 5 is amended to specify that the composition contains the halosalicylic acid compound in an amount of “about 0.25% to about 2% by weight, based on total weight of the composition.” This range is supported by the application as filed at page 5, lines 14-17 and page 11, lines 7-10, wherein a broader range of “about 0.25% to about 2.2%” and the more narrow range of “about 0.5% to about 2.0%” are disclosed. The disclosure of the upper endpoint of the more narrow range (“about 2%”) necessarily defines a range of “about 0.25% to about 2%” within the broader range. See In re Wertheim, 541 F.2d 257 (CCPA 1976).

Claims 6 and 7 are amended to specify that cosmetically acceptable salts of the halosalicylic acids are included. This language is supported by claim 1 as originally filed which embraces both the case where X is hydrogen (i.e., the halosalicylic acid) and the case where X is “a cosmetically acceptable cation” (i.e., a salt of halosalicylic acid). Further, Examples 1 and 2 each disclose “sodium 5-chlorosalicylate” (the sodium salt of 5-chlorosalicylic acid).

Claim 9 is amended to specify that salicylic acid is present in an amount of “0.0625% to about 2% by weight” which finds support in Table 1 on page 5 of the application as filed wherein it is disclosed that 0.0625% salicylic acid is the minimal lethal concentration (MLC) against *Pseudomonas aeruginosa*. Thus, Applicants submit that one skilled in the art would understand that the inventors were in possession of compositions having a concentration

of salicylic acid as low as 0.0625% and that such compositions were recognized to have utility according to the invention. Claim 9 is also amended to specify that the 5-chlorosalicylic acid is present in an amount of “about 0.1% to about 2% by weight” which finds support in particular at page 5, lines 14-17 of the application as filed wherein it is disclosed that the compositions of formula I may be present from about “about 0.1% to about 2.5%” and “most preferably, about 0.5% to about 2.0%.” The upper end of the narrow range (“about 2.0%”) necessarily defines a range of “about 0.1% to about 2%” within the broader range. See In re Wertheim, 541 F.2d 257 (CCPA 1976).

Claim 24 is amended herein to delete reference to “excess sebum production,” without prejudice or disclaimer, consistent with the amendments to independent claim 1, and to specify that the composition for treating enlarged skin pores is “5-chlorosalicylic acid, or a cosmetically acceptable salt thereof” which is supported throughout the specification and claims as originally filed.

Claim 25 is amended to delete reference to treating blackheads, without prejudice or disclaimer, consistent with the amendments to independent claim 1, and to recite that the “composition further comprises an antioxidant” which finds support throughout the application and in particular at page 14, lines 1-10 wherein “antioxidant agents” are listed as suitable components and numerous antioxidant agents are disclosed.

Newly added claim 27 finds support throughout the specification and claims as originally filed, and in particular in originally filed claims 1, 7 and 23 and in the specification at page 10, lines 15-16 (“the halosalicylic acid derivatives of formula I can be employed to treat enlarged skin pores”) and page 4, line 25 (5-chlorosalicylic acid is most preferred”). Newly added claims 28 mirrors original claims 4 and newly added claim 29 finds support for the identical reasons discussed above with respect to amended claim 5.

Newly added claim 28 finds support throughout the application as filed, and specifically at page 11, lines 5-11 wherein is it stated that compositions “containing a halosalicylic acid derivative of formula I, intended for use in the treatment of enlarged pores” may contain the halosalicylic acid derivative form “about 0.1% to about 2.5%” by weight of the composition. Newly added claim 29 find support for the substantially identical reasons discussed above with respect to amended claim 5.

Newly added claim 30 specifies that the composition “further comprises a mattifying agent to minimize the color contrast between an enlarged pore and its surrounding skin” and newly added claim 31 specifies that the mattifying agent comprises dimethicone. These claims find support in the application as filed on page 11, lines 19-21 (“[p]referably, the composition also contains a mattifying agent, in other words, an agent that acts to minimize the color contrast between an enlarged pore and its surrounding skin thereby optically concealing the enlarged pore”) and at page 12, lines 18-19 (“Mattifying agents that can be employed include, for example, dimethicone blends, silica, and mixtures thereof. Dimethicone blends are preferred”).

Newly added claims 32 specifies that the composition comprises and antioxidant and thereof finds supported for the identical reasons discussed above in relation to amended claim 25. Newly added claim 33 specifies that the antioxidant “has one or more thiol functions, in either reduced or non-reduced form” which is found in the application as filed on page 14, lines 6-8 wherein it is stated that “[o]ther suitable antioxidants are those that have one or more thiol functions (-SH), in either reduced or non-reduced form, such as glutathione, lipoic acid, thioglycolic acid, and other sulfhydryl [sic: sulphydryl] compounds.” New claims 34 recites that the antioxidant is vitamin C which finds support on page 14, line 1.

Newly added claim 35 recites that the composition further comprises one or more anti-aging actives which is supported throughout the application, for example, in originally filed claim 21 and in the application at page 13, lines 11-22. New claim 36 recites that the anti-ageing active is an alpha hydroxy acid which finds support, for example, at page 13, line 11. New claim 37 recites that the composition further comprises lactic acid, glycolic acid, or a combination thereof which finds support at page 14, line 20. New claim 38 specifies that the composition further comprises “an exfoliant selected from the group consisting of alpha hydroxyl acids, beta hydroxyl acids, keto acids, oxa acid, oxa diacid, and mixtures thereof” which is supported by the disclosure at page 14, lines 18-21. New claim 39 states that the oxa diacid is trioxaundecanedioic acid. Support is found at page 14, lines 18-21. New claim 29 recites that the composition further comprises ascorbyl-phospheryl-cholesterol which is disclosed in the application as filed on page 14, lines 12-13. New claim 40 specifies that the composition further comprise a retinoid which finds support, for example, on page 13, line 12.

The amendments to the preambles throughout the claims are considered purely cosmetic. Applicants submit that the amendments to the claims and the newly added claims are fully supported by the application as filed and kindly request entry thereof.

Claim Rejections

35 U.S.C. §103(a)

The Examiner has rejected claims 1-7 and 23-25 under 35 U.S.C. § 103(a) as being obvious over Beerse et al. (U.S. Patent No. 6,294,186), in view of Duennenberger et al. (U.S. Patent No. 3,708,527), Perricone (U.S. Patent No. 6,743,433), and Wiegand et al. (U.S. Patent Pub. 2002/0151527). Dependent claims 8 and 9 are rejected over this combination further in view of O'Halloran et al. (U.S. Patent No. 6,168,798) and claims 10-21 are rejected further in view of Gormley et al. (U.S. Patent No. 6,174,892) and Menon et al. (WO2001/66080). Applicants traverse these rejections.

Briefly, the Examiner contends that Beerse et al. teach a “method of treating or preventing dandruff and acne comprising applying a topical composition comprising a benzoic acid derivatives” but does not “teach expressly the employment of the halogenated salicylic acids for treating acne or the skin conditions associated with acne.” The Examiner argues that Duennenberger et al. teach “that the salt of 5-chlorosalicylic acid is known to be an antimicrobial agents and useful in cosmetic compositions,” that Wiegand et al. teach that sebum output and bacterial infection is “closely related to acne,” and that Perricone “reveals that acne is associated with skin pore size and treatment of acne is also beneficial in reducing pore size.” Thus, according to the Examiner, “it would have been obvious to one of ordinary skill in the art, at the time the claimed invention was made, to employ the particular halogenated salicylic acids disclosed by Beerse et al. for treating subject with acne and/or dandruff.”

Claim 1 has is amended herein to delete, inter alia, acne and dandruff from the list of skin conditions to be treated. This amendment is made without prejudice or disclaimer of Applicants' right to pursue the same subject matter in one or more related applications. Insofar as the present rejections relate to treating acne or dandruff, the rejections are overcome.

Moreover, Beerse et al., Duennenberger et al., Perricone, and Wiegand et al., whether taken alone or in combination, fail to teach or suggest a method for reducing pore size

using the instant halosalicylic acid derivatives. Applicants submit that the Examiner's reasoning based on these references is faulty. The Examiner cites Perricone as drawing a connection between acne and pore size. In fact, Perricone makes no such connection. Rather, Perricone is concerned with specific alkanolamine actives which are said to advantageously have the dual properties of treating acne and reducing pore size. Perricone states that "[i]t is a further advantage of the invention that topical administration of alkanolamine compositions provide other beneficial alkanolamine effects," among which it is said that they "cause visible contraction of skin pores" [col. 11, lines 29-36]. This cannot be fairly regarded as teaching that any anti-acne agent reduces pore size, but rather the effect is said to be specific to alkanolamines -- i.e., it is among the "beneficial alkanolamine effects." Thus, it is mere speculation that the compounds of Beerse et al. or Duennenberger et al. would also have this property since they are chemically unrelated to alkanolamines in both structure and function. For at least this reason, Applicants submit that the rejection should be withdrawn as it is applied to reduction in pore size.

It is noted that the Examiner had previously required Applicants to elect one "patentably distinct species" from the "particular skin conditions" recited in claim 1 because "the different skin conditions herein may have different etiologies and symptoms." [March 8, 2007 Office Action, p. 4]. In response, Applicants elected reduction in pore size without traverse. Nevertheless, in the present Office Action, the Examiner has included acne treatment along with reduction in pore size, evidently to support the circuitous argument the use of antibacterial compounds to treat acne would render obvious a method of reducing pore size (which, as discussed above, it does not). It would appear that the Examiner's inclusion of acne treatment was necessitated by the fact that the art fails to teach or suggest using halosalicylic acid compounds to reduce pore size.

In view of the foregoing, Applicants submit that the method of reducing pore size as recited in independent claim 1 and newly added independent claim 27 fully distinguishes over the art of record.

The Examiner has also included the condition of "excess sebum production" with the elected species in the Office Action, because, according to the Examiner, increased sebum production is "closely related to acne." The Examiner contends that Wiegand et al. draws the connection between increased sebum production and acne. Wiegand states that the "primary

factors that lead to the formation of acne Vulgaris” include “increased sebum output resulting in oily, greasy skin” and “increased bacterial activity normally due to an overabundance of *Propionibacterium acnes*” ¶ [0007]. Thus, it may be said that Wiegand discloses that increased sebum production and bacterial activity are, individually, implicated in the etiology of acne. However, it does not follow that treatment of acne with an antibacterial agent reduces sebum production. Again, it is simply speculation that the antibacterial compounds of Duennenberger et al. would also reduce sebum production. Even assuming, *arguendo*, that the skilled artisan would have been motivated to use the antibacterial compounds of Beerse et al. and Duennenberger et al. to treat acne, it is not seen that there would have been any expectation whatsoever that those compounds could also be used in a method to reduce sebum production since none of the art of record indicates that killing *Propionibacterium acnes* results in a reduction in sebum production. Wiegand et al. certainly does not suggest as much. For at least this reason, Applicants submit that the method of reducing sebum production fully distinguishes over the art of record. Nevertheless, the claims have been amended herein to delete reference to reducing sebum production solely to expedite allowance of claims directed to embodiments of current interest.

Applicants submit that the art of record does not teach or suggest the subject matter of amended claim 1 or new claim 27 for at least the foregoing reasons. Having distinguished independent claims 1 and 27, Applicants submit that the claims dependent therefrom are patentable for at least the same reasons. However, Applicants reserve the right to separately address the patentability of the dependent claims in the future, should that be necessary.

CONCLUSION

Applicants respectfully submit that the instant application is in condition for allowance. Entry of the amendments and an action passing this case to issue is therefore respectfully requested. In the event that a telephone conference would facilitate examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted,

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